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OFFICE OF PETITIONS

In re Application	:
Jeffrey L. Garwin	:
Application No. 09/989,092	: DECISION ON APPLICATION
Filed: November 19, 2001	: FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 13222.00014	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 CFR 1.705(b)," filed September 2, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred forty-five (245) days to two hundred fifty-seven (257) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred fifty-seven (**257**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 2, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred forty-five (245) days. On September 2, 2004, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is two hundred fifty-seven (257) days. Applicants dispute the reduction of twelve (12) days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed December 3, 2001.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

¹ PALM records indicate that the Issue Fee was received in the Office on September 2, 2004.

The Office initially determined a patent term adjustment of two hundred forty-five (245) days based on an adjustment for PTO delay of two hundred fifty-seven (257) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) reduced by applicants' delay of twelve (12) days, pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The reduction of twelve (12) days of applicant delay is at issue.

The reduction of 12 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the Notice to File Missing Parts of Application mailed December 3, 2001, is of record in the application with a date of receipt by the Office of February 20, 2002. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have entered the date that the instant application was complete as March 15, 2002 or assessed applicants a delay of twelve (12) days. The response was filed within the three-month period under 37 CFR 1.704(b) and accordingly, applicant's delay should have been assessed as zero (0) days. Applicants did not delay in replying to the Notice to File Missing Parts of Application and thus did not fail to engage in reasonable efforts to conclude prosecution of the application.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is two hundred fifty-seven (257) days.

The Office acknowledges submission of \$200.00 and an additional amount of \$400 for Reinstatement for part of the period of adjustment reduced pursuant to 37 CFR 1.704(b). However, the fee set forth in 37 CFR 1.18(e) is set at \$200.00 and since no additional fees are required and in view of the decision above, \$400.00 will be credited to deposit account number 23-3050 as authorized in the request filed September 2, 2004.

The Office will forward the file to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Patricia Faison-Ball, Senior Petitions Attorney, at (571) 272-3212.

Karin A. Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen